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MISSOULA, MT

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PATRICK E. DUFFY
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

GLEN E. ZARICZNY,)	CV 04-245-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MISSOULA COUNTY DETENTION)	
FACILITY and MEDICAL DEPT.,)	
)	
Defendant.)	
)	

United States Magistrate Judge Leif B. Erickson entered Findings and Recommendation in this matter on July 11, 2005. Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1) (2000). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427

(9th Cir. 2000).

Plaintiff submitted his Complaint on December 20, 2004 pursuant to 42 U.S.C. § 1983 but failed to pay the filing fee or alternatively apply to proceed *in forma pauperis*. At the time, Plaintiff was incarcerated. The Complaint was improperly filed due to the lack of the paid fee. The clerk immediately notified Plaintiff the Complaint had been filed and informed him of the need to keep the Court apprised of a change of address.

On January 5, 2005, the Court ordered Plaintiff to either pay the \$150 fee or apply to proceed *in forma pauperis*. In this Order, the Court reiterated that Plaintiff must inform the Court of a change in address. Plaintiff indicated he received the Order because he requested an extension of time to comply. The Court granted this Order on February 17, 2005, but that Order was returned on February 28, 2005 with an indication that the Order was undeliverable because Plaintiff had left the Missoula County Detention Facility. The Court issued a Show Cause Order on April 15, 2005, but that Order was also returned as undeliverable.

Plaintiff has yet to respond to the January 5, 2005 Order and has yet to submit the required filing fee or file an application to proceed *in forma pauperis*.

Based on the foregoing, IT IS HEREBY ORDERED that Judge Erickson's Findings and Recommendation (dkt #1) are adopted in full. Plaintiff's Complaint is DISMISSED for failure to pay the filing fee or proceed *in forma pauperis*.

DATED this 18 day of April, 2006.

Donald W. Molloy, Chief Judge
United States District Court